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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,677	06/22/2000	Harold Jeffrey Goldberg	10767-0007-2	4736
26646	7590	02/26/2004		
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			EXAMINER	ENG, DAVID Y
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/575,677	GOLDBERG ET AL.
	Examiner	Art Unit
	DAVID Y. ENG	2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to disclose processor readable instructions that when executed by a processor implement mechanisms in a manner as claimed in claims 1, and 3-5. The specification fails to disclose how to determine a level of details to report network status to a network operation console based on a user request and a predetermined allocation of bandwidth for use in reporting network status. There are no circuits, flow chart or program disclosed for doing that. The specification merely consists of desired functional statements. Showing a few menus or dialog boxes of a program in the drawings is not sufficient.

The Examiner is not requiring Applicants to submit a program code. The specification fails to disclose how the level of details to report network status is determined based on predetermined allocation of bandwidth. Note that Applicants rely on that very feature for patentability. Without the disclosure, one of ordinary skill in the art would not be able to make and use the invention as claimed.

In response to the rejection, Applicants point to Figure 2 to support their arguments. Figure 2 is purportedly for showing an overall system configuration for one

embodiment of the present invention as indicated on page 4 of the specification. The description of Figure 2 merely consists of desired functional statements. There is no description in the specification as to how to determine a level of details to report network status to a network operation console based on a user request and a predetermined allocation of bandwidth for use in reporting network status.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Scope of claim 2 is not clear. It is not clear what “—level of details on a switch by switch basis” means. The system is not recited for determining report level on switches.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pendleton (USP 5,982,753) in view of Kavner (USP 6,430,607).

See at least the abstract, Figures 2, 3 and 6, columns 1-4, lines 50 et seq. of column 7, lines 14 et seq. of column 8 and lines 37-45 of column 8 in Pendleton.

Pendleton teaches a computer implemented system (see Figure 2 and 6) for managing (col.2, line28-44, lines 6-20 of column 3) a flow of network status messages to a network operations console, comprising: a processor; and a computer readable medium encoded with processor readable instructions (Figure 2 and 6) that when executed by the processor implement, a network status gathering mechanism configured to ascertain a network status (lines 28-44 of column 2, step 202 of Figure 6, line 50 et seq. of column 7), a network status reporting mechanism configured to report said network status to said network operations console (step 208 of Figure 6 and lines

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14 et seq. of column 8), and a network status reporting level determination mechanism configured to determine a level of details to report said network status to said network operations console based on at least one of user request (step 212, lines 37 et seq. of column 8). It is well known that bandwidth is required to be allocated for transmitting data including reports of network status. Pendleton does not teach that bandwidth is predetermined. Predetermining bandwidth is well known in the art. Kavner teach preallocate bandwidth to message stream based on priority. From the teaching of Kavner, it would have been obvious to a person of ordinary skill in the art to allocate bandwidth for use in reporting network status if it is of higher priority so that the report is able to reach the administrator faster. Further note that details of report are always limited by its allocated bandwidth because it is impossible for a report to use more bandwidth than it is allocated. For example, larger screen display shows more details of information or image than smaller screen display. No inventive concept is seen specially in view of the insufficient disclosure.



DAVID Y. ENG
PRIMARY EXAMINER